

COMMISSIONERS APPROVAL

CHILCOTT *GC*

LUND *BLT*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....November 22, 2006

Members Present.....Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met to discuss ramifications of the recent election, specifically the three Commissioners versus five Commissioners and how the three existing Commissioners will be required to run again to hold their seats. Various members of the community were present for the discussion.

Commissioner Chilcott called upon Fred Thomas who is a resident of Stevensville and previous State Senator. Fred stated this is an important issue to the community. He relayed the voters spoke in regard to having more Commissioners and shorter terms. Those ballot issues were understood. But, in regard to having the three sitting Commissioners run again, he felt most voters did not understand this requirement. He went on to say the Local Government Study Commission hid their work from the public and their web site is hard-to-follow and is not even part of the Ravalli County web site. He stated it is obvious to him that they did not want people to know what they were doing, so they hid it from the public. They could have allowed the three Commissioners to stay by writing a transition plan that did not require them to run again. He stated this should have been done 'in the light of day, allowing the public to participate'. He stated the proof of what he is stating is even found in the editorial opinion of the Ravalli Republic when they stated it was never clear even to them that it was the intention to have all County Commissioners run again. He stated the Study Commission published their document on a 'foreign web site'; and did not explain what happens with the change of five Commissioners versus three. Fred also stated the Study Commission gerrymandered the districts, not complying with the Montana Law. They were 10% off in their first maps, now the new maps are only 5 people off in population. Fred stated this was a 'plan that was cooked up by a couple of members of the Commission'. Ballot issue on 3 versus 5 was clear, but the implications they cooked up do not match and meet what the voters understood. He stated this issue was not clear to the public, thus not correct. In their final report, the Study Commission has said they are staying with the current form of government. Fred stated the Attorney General's opinion is not well written, but the voters only added two more members. He suggested they encourage a

new Attorney General's opinion; have the Study Commission write a new transition plan in the light of day and to do it properly. He also stated the Commissioners need to challenge the interpretation in court with a declaratory judgment. He was sure the Judges will 'fix this'. Re-writing state law is a ways off, but it needs to be addressed. He stated the Study Commission 'is not living within the statute'.

Gene Williams lives in Hamilton. He dittoed what Fred stated. He stated he is really upset with the way it was done, and it was not an accident.

Dave Hurtt of Florence stated voters approved 2 of the 5 changes; the term of office was simply to change from 6 to 4 years. No where in the voters' pamphlet was any mention ever made in the term of any of the sitting commissioners. He stated the Study Commission sought to manipulate the approval of question 3; for the current sitting Commissioners to have to run again. He stated legal action will be taken to the highest court.

Charles Dresser of Stevensville expressed his outrage of requiring the three sitting commissioners to run again. This was not a recall election and it did not follow the law. No where in any material did it address this issue of making the three sitting commissioners to run again. To interpret the change to five Commissioners and have new elections is absurd.

Betty Swift of Hamilton stated the Commissioners have a contract with the public to serve their term. There is a financial contract and if they do not get re-elected again they should be paid for their term.

Ray Karr of Stevensville feels outraged and their votes have been disenfranchised. He felt the Commissioners should fight to preserve their votes as they have lost some democracy with this issue. He stated he voted for the sitting Commissioners and Commissioner –Elect, and his vote needs to be protected.

Dallas Erickson of Stevensville agrees with Fred Thomas. He stated the Commissioners need to hire their own attorney and kick George Corn out of the Commissioners meetings. He stated George is part of the liberal faction and he has disenfranchised the voters on other issues as well. It is not right to require the Commissioners and Commissioner – Elect to run again. The Commissioners should vote to only make two new Commissioners run.

Terry Polumsky of Corvallis stated they elected the Commissioners to be leaders – and Commissioners should be leaders. This has thrown the whole county in a 'tizzy'.

Gary Zebrowski of Hamilton questioned what actions the county and citizens could take in order to make sure this legal issue is handled so they can move forward.

Susanna Pyron of Florence stated the Ravalli Republic took some responsibility for not informing the people. There was no place for them to find out this information. The

Local Government Study Commission was responsible to let the people know what they were voting on.

Tom Brader of Hamilton stated as an elector, he felt he has been denied the basic information. He asked who knew and when did Alec Sutherland know this and when did George Corn know, when did Skip Rosenthal know and when did Ravalli Republic know? He stated the Ravalli Republic had a cavalier attitude about this whole thing and they should not pass off on this information. We, the voters, can not read every single page, we depend on that information. So who knew and when did they know?

Dallas Erickson asked for a show of hands of those who agreed with Fred Thomas.

A member of the audience asked Alec Sutherland to respond to the comments.

Alec Sutherland stated he has no comments to add, but people could visit with him after the meeting.

Bill Hester asked Alec if the Study Commission discussed this issue. Alec stated yes they did. Bill asked if the electorate might have a different understanding of the implications. Alec stated the Study Commission did what they could with money the Commissioners gave them which included the use of Sally for the minutes and the advertisement of meetings and publication of the final plan in the voters' pamphlet. He stated the Study Commission Members even utilized their own money for advertisements, refreshments, payment for the use of places to meet and for the web site. He stated they have made public comment available at all meetings, going from Florence to Darby. And those meetings and discussions have been held since June of 2005.

Bill advised Alec they had to be aware of that fact that the voters did not know the implications of moving from three to five commissioners. Alec stated a majority of the voters said they wanted this change and they understood that the statute allowed for the three sitting commissioners to run again. To state that all voters were ignorant might not be correct. He stated the Study Commissioners did everything they could do to put this out to the voters, which included dropping the final plan and voters pamphlet off at libraries, post offices and other public places.

Bill asked about the transition plan and how it could have accommodated the sitting commissioners. Alec stated the transition plan has been formalized and does not happen after the fact (after the vote). He stated they sought advice from the Local Government Center in Bozeman, the Attorney General's opinion and the County Attorney. Alec stated the Final Plan which includes the transition plan follows state law.

Michele Horsley stated the sample ballots did not show the implications would be null and void for the sitting Commissioners. She stated there was 'only one voice that was meant to be heard'.

Howard Anderson, Member of the Local Government Study Commission stated as far back as June, his notes show that several meetings the Local Government Study Commission held discussed what would happen if five Commissioners were elected and what kind of transition plan would take place. He stated they read the Montana Statutes, they made contact with Bozeman Center and the County Attorney; who all confirmed that all five commissioners would have to run again. He stated they made contact with Attorney General's staff and said the same thing, advising the Local Government Study Commission to review everything with County Attorney George Corn, which they did. George and Deputy County Attorney Karen Mahar reviewed the laws very carefully stating five commissioners would have to run again. He stated all of the Study Commission did not want to go out and beyond what the County Attorney told them. The Commission did not seek other legal counsel due to the lack of finances. He stated that some of the Study Commission did not want the three Commissioners to have to run again, but they had to follow the law. Howard stated he would be the first to say that some of the laws do not read well; they are hard to understand and they need to be corrected.

Commissioner Thompson asked Howard if he personally spoke with Ken Weaver (of the Local Government Center in Bozeman). Howard stated not on this particular issue, but he did visit with Ken on several other issues.

Betty asked Howard why this issue was not made clear to the voters. Howard stated he did not write any of the report; however he reviewed the report and felt comfortable with it. He stated they discussed this specific issue on numerous occasions at public meetings.

Commissioner Chilcott asked who authored the supplementary report. It was noted that Alec wrote most of the report while Glenda wrote the minority report and the suggested changes that should be made in county government such as the hiring of a Financial Officer, Chief Executive or Administrative Officer, etc.

Fred Thomas stated he follows elections and it is clear the data does not explain everything. It is incumbent upon the Study Commission to make it clear as a bell and what was provided was not clear. He stated Glenda did point out in the minority report and these things 'could happen'. But it is not the responsibility of the Minority Report to make this information clear. It is the majority's responsibility to do it. He stated this is not a new form of government and this current Study Commission is still in effect 90 days after an election; therefore, they can deal with this by writing a new transition plan. If not, the Commissioners should obtain a declaratory judgment.

Howard Anderson stated they tried numerous times to have the newspaper write something, but the Study Commission 'got thumbs down' on most everything submitted. Commissioner Lund stated she too sent in a Valley View point that was not put in the paper.

Dave Hurtt stated the ballot shows all five questions but does not address wiping the slate clean and electing all new commissioners. He stated it was a poor way to put it together.

Gary Zebrowski also sent in a Valley View Point which was not printed, but he did receive a letter from the Editor stating they are going to print something else.

Editor Jenny Johnson was present and stated they only have so much space and they try to print everything.

Charles Dresser stated Fred Thomas has clarified this issue to everyone. The law makes a distinction that changes the structure of county government and there are manners in which to proceed. He stated the Study Commission still has 90 days to do a transition plan so they will only need to elect two new Commissioners.

Commissioner Chilcott stated the Commissioners spoke to Ken Weaver of the Local Government Center in Bozeman this morning. Ken was then put on conference call. Ken agreed the study commission stays in office 90 days after the election and during that time 7-3-193 MCA allows them to do a transition plan. Ken stated the Study Commission prepares the plan (according to 7-3-157 MCA), which allows the plan to be adopted by governing body. Ken stated a new plan is defined 7-1-4121 (under plan of government) which is not the same as a form of government. Currently the form of government is the elected county commissioner plan of government (as per 7-3-102 MCA), which addresses the number of county commissioners under the elected commissioner form of government. Ken stated language from 7-3-111 MCA addresses the four year terms for elected Commissioners. He stated an amendment of the plan and certificate of the proposed plan needs to be filed with Clerk and Recorder. Commissioner Lund stated the Study Commission filed that plan on September 11, 2006.

Ken stated there should be transition in the final report and it would come after the election. Alec stated the orderly transition was submitted in the final plan because the voters needed to know the options prior to the actual vote. Ken stated if that was the Study Commission's logic, it is unprecedented. However, it is within the law to include the transition report in the final plan. The question now is if the transition report can be amended.

Ken indicated section 7-3-158 (3) of the MCA addresses and provides the ability for the Commissioners to finish their terms of office if the Study Commission includes that ability in the transition report. He stated he can see no problem with the Study Commission amending their report to allow this.

Alec stated both he and Ken addressed Attorney General's opinion in regard to Big Horn County (A.G. Opinion #44); and it does reference to 7-3-158 which defined the Study Commissions' deliberations. Ken stated this is a question for the County Attorney. Ken stated it does not make a lot of sense to make the transition plan before the vote, but the law allows for the transition plan to be filed with the final report which is what occurred.

Fred Thomas stated the term plan and form (under 7-3-185 MCA) is one in the same. He stated the Study Commission may make recommendations to the existing plan of

government (or form). He stated there is no new form of government recommended in the plan (as stated in Study Commission plan); therefore the Study Commission can amend their report. Ken stated there has been no change in the form of government, and secondly the language in (Title 7 -3) numbers 157 and 158 includes and references the charter and petition. Ken stated there already has been an amendment to the present plan. The question is if the Study Commission can prepare a transition plan to allow the three to stay. He stated that is a legal question for the County Attorney.

Alec stated the plan addressed the three Commissioners' running again. Many people knew this would be part of the transition as it was discussed numerous times in the public venue. And it is not up to him if an amendment in the transition plan should or even could be done.

Fred stated this change was not done by charter or petition so the Commissioners that were currently serving should not be dismissed or made to run again. Ken stated the language is written for petition and or charter. 7-3-158 MCA relates to the petition process and 7-3-193 MCA refers back to this by reference, so whether or not this change is done by petition does not matter. Ken stated Fred's analysis is reasonable however.

Commissioner Lund asked if the Study Commission should reconvene and address the amendment to a transition plan. Ken stated he feels it would be prudent for Study Commission to review this suggestion and he would draft the amendment at no charge.

Gary Zebrowski asked Ken if the Study Commission does not alter the transition plan, and the county or citizens do not obtain a judgment; does the Study Commission dictate if the commissioners stay or have to run again. Ken stated he has not reviewed the transition plan. If it says nothing, it is his opinion that a transition plan **may** provide for the continuation in office. And while he like Fred's interpretation on 7-3-158 MCA, it would need to go to court for an opinion. Every transition report he has ever read, addressed the continuation of the current officials. Gary stated the voters' concern is that the will of the voters is reflected, and not dictated by the Study Commissions interpretation.

Ken stated it is actually the omission by the Study Commission which actually addresses the transition plan and requires the three sitting Commissioners to run again.

Michele asked Ken if it is the mission of the Study Commission to inform the voters of the transition plan. She stated if you do not tell the truth, it is the same as telling a lie. Ken stated there is no language requiring the transition plan to be done in advance of the vote, and while he hears Alec Sutherland's argument, how would the voters know before they vote? He stated clearly the 90 days allows for the transition plan after the election. Ken stated the failure of the Study Commission to address this is ridiculous.

Charles stated there was an election for a Commissioner on the ballot and a reasonable interpretation is that this Commissioner, who was just elected, would not have to run again. Ken agrees, further stating this type of transition does not have to happen and



there is a mechanism not allowing it to happen. He stated it is nonsense to make the person run again. Ken also stated with the possibility of having all new Commissioners, it seems disastrous.

Commissioner Chilcott asked the Study Commission Members if it was their intent to have the Commission run again. Alec stated it was his intent. Howard stated it was not what he wanted to do, but they were following the law.

Glenda stated in most of the public hearings as the information became evident, she had stated she 'felt it would be disrespectful to the election process to require the sitting Commissioners to run for office again'. And while that is her personal opinion, she indicated she could locate this many citizens (referring to the number of citizens in the room) who understood the ballot issues, which included the need to run again. She stated she only recognized one person in the room who was in attendance at any of the 150 Study Commission meetings. She asked how many people read her minority report which was inserted into the mail out ballot pamphlets as it addressed the possibility of having the Commissioners running for office again.

Glenda stated she is not adverse to another Study Commission meeting in order to address these concerns. Howard and Alec agreed to meet and consider these options. Alec stated they spent months reviewing the options. That discussion (with the public always noticed and invited) included keeping the three commissioner districts and adding two at-large districts, which they found out they could not do according to the County Attorney. He stated they reviewed all of the possible options that could be developed into a transition plan not knowing how the voters were going to vote. The Study Commission Members all concurred the contingencies provide such a 'hair ball' it was difficult to wade through and describe on paper. That is why they continually asked the Local Government Center for their opinion and sought continual advice on the law from the County Attorney. Based on all of those discussions, that is why they 'did what they did'. Alec further stated they addressed the 'structure of government', not the people sitting there which was their charge under the law. He stated they understand the sitting Commissioners have to run again, and while they might consider that suffering and or a hardship, this transition allowed a 'one time change' that did not require a rolling change to keep the staggered terms. Alec stated if the people think the transition plan was 'politically charged' they are incorrect. He stated the Study Commission worked hard. They listened and asked for participation every step of the way.

Commissioner Chilcott stated if they were being 'respectful' and it was not directed to the sitting Commissioners, as they could have written a transition report that would have allowed the Sitting Commissioners to stay in office. He asked why it was not considered. Alec stated they did consider it in almost every discussion. He stated their decision to make the one time change which allowed for staggered terms is not about Commissioner Chilcott, Commissioner Thompson or Commissioner Elect Lyons. Rather, it is how Ravalli County operates day to day making sure the citizens get what they pay for. Is it better to have five people making decisions or should we retain three? He stated the voters overwhelmingly chose five Commissioners for those day to day decisions.

Michele asked the Study Commission to consider all the contingencies. She stated she understands this was a heavy task and burden, but the Study Commission knows what the voters desire (by not voting in concurrent terms), so they should amend the transition plan to leave the sitting Commissioners alone and not make them run again.

Commissioner Chilcott stated this issue of having all five Commissioners run again was listed on page 34 of final report. He asked 'how could the voter be expected to know all of this information'. Alec stated the advisory plan is listed and addresses the specifics of the ballot issues. He stated the Study Commission had limited financing on publications. And the amount of financing was decided upon by the Commissioners. Alec also noted in the plan of apportionment for the final plan; the Study Commission asked the GIS Department for data so they could draw up boundaries for three-member or five-member Board. The Study Commission stayed at arms length from the drawing of the districts, and when they were given the map, they operated under it for months. But two days before the final plan they heard the underlying data was wrong. The Study Commission then asked to have another map drawn up, but the GIS Department declined. Thus they went to Missoula County and asked them to develop a map, which they did in an afternoon. Commissioner Chilcott stated there were considerations that GIS had to make. Alec reiterated the Study Commission did not dictate any lines on the map to GIS. GIS presented the map based on their expertise.

Gene asked Alec about having the Commissioners go through another election, and if this is a specific issue that is causing all the problems. He asked how the Study Commission could change this so there would be no negative impact 10-years down the road. Alec stated he understands the Commissioners' concerns. But the Study Commission simply addressed the structure of government which is their charge under the law and as elected officials.

Charles stated there is an opportunity to solve the problem, and not go to court as it does not make sense to have them all run again. The right solution is to address this in another transition plan.

Fred asked if the Study Commission addressed the five new Commissioners. Alec stated they followed the statute. Fred asked if it was it the Study Commission's job to override the three elected officials previous elections. Alec stated he would reject that premise as they did not override any election. They simply put it out there for the voters to decide and the voters made that decision when they voted for five Commissioners.

Dallas asked if the Study Commission would reconsider these options. Alec stated they could meet again and consider them if they have the legal authority to do so.

Terry Nelson stated there was discussion by Glenda in the Minority Report. He asked if George stated it was not an option to allow the three sitting Commissioners to stay in office. Alec stated George had advised the Study Commission that was one option (for only two to be elected). But the Study Commission agreed that in order to harmonize the



options of the ballot and make it follow the law, they did not address a transition whereby the three sitting Commissioners would not have to run again. Rather the change would occur at once, in order to obtain the staggered terms. Otherwise the change in order to keep the staggered terms would have to occur over a period of three or four years.

Laura Merrill stated there are people who understood the issues; knowing five would be required to run again, which included her.

A member of the audience asked Alec asked if they would seek legal counsel to reconvene, and if so, would they review changing the transition report to keep the three from having to run again or keep their course of current action. Alec stated any meetings will be properly noticed and he could not comment on changing the transition report at this time.

Jenny Johnson asked what gives the Study Commission the authority to reconvene. Alec stated he can not answer that either as he does not know if they even exist after the election. Commissioner Chilcott stated according to one Attorney General's opinion, it allows the sitting Commissioners to stay in office. Jenny stated she is not asking that question, she is asking 'by what authority would the Study Commission reconvene if they have filed their final report'. Alec stated they will have to determine that from the statutes.

Jean Brown asked what Alec's credentials were to be a Study Commission Member. Alec stated he was elected by the voters, just like any elected official. She asked again what his credentials were. Alec stated his work is a scientist as GSK.

Howard, Alec and Glenda agreed they could meet Monday morning. Glenda will contact Vicki to see if she is available. It was tentatively agreed to meet on Monday at 0730 at the Carriage House on N. 4<sup>th</sup> Street, Hamilton.

Commissioner Chilcott stated the Commissioners can take action by way of a declaratory judgment, because, as per the County Attorney, they may have a justifiable controversy in order to request a Judicial Review or relief of this action. Howard Lyons stated they may seek a new Attorney General opinion. Commissioner Chilcott stated they do not have enough time to seek legislative assistance and they do not want to leave this legacy to the other counties. Commissioner Chilcott stated the citizens have an opportunity under 7-3-154 MCA, which provides the ability to file a petition to challenge this. The citizens have 60 days to file the petition. If nothing is done during that time they must wait 3 years for any changes of government.

Commissioner Thompson stated he recognizes the will of the voters in regard to having five Commissioners. However, he has had numerous people complain to him stating they didn't know 'he was being thrown out of office' and would have to run again. Commissioner Thompson stated he is disappointed by having to run again. He stated he read the supplementary report but did not think he would be required to run again if they went to five Commissioners. 60% of the electors stated they wanted overlapping terms,

not concurrent terms. He stated his wife feels there were 'special interests' putting this language in (making the three run again). The Attorney General's opinion (Chris Tweeten) is a muddled mess. He stated he sees confusion over the transition plan and asked if it is even a final document. He also stated they do not know if the Study Commission is even in power. If they are, they need to re-do the transition plan so the sitting Commissioners do not have to run again. He stated there are probably some citizens who want him to go away, but personally he would like 10 citizens ask for a judicial review.

Commissioner Lund stated she appreciates Alec standing up to these questions from the citizens. She stated she would like to see a judicial review, but wants to wait and see if the Study Commission can solve this problem. If not, then they can move ahead with that request.

Commissioner Chilcott stated it is clear to everyone that the voters chose overwhelmingly to have five Commissioners. However, their concern is for the transition into five Commissioners. He stated 'right and legal don't always walk hand in hand'. He agreed they need to explore their options and he is hesitant to hire an attorney and spend tax payer funds.

Fred noted the Commissioners have not set the special election. Commissioner Lund stated the Study Commission asked for the election; and they ordered the special election in their transition report

Commissioner Chilcott stated they would suspend their request for judgment until the Study Commission makes a determination.

In other business the Board met with Airport Board Members Dave Hedditch, Fred Haaskamp, Jim Trowbridge and Theresa Eckberg in order to review the proposed Minimum Standards for Long-Term Activities at the Ravalli County Airport. Also present was Airport Manager Page Gough.

Dave stated F.A.A. Administrator John Styba advised him the Ravalli County's Minimum Standards are too weak. He suggested they utilize those that have stood up to the test; such as Bozeman, Helena and Cody, Wyoming. Dave passed out a proposed Minimum Standards document which has some changes from the current one. Terry has been gracious enough to put the document together even though she is leaving the Advisory Board. The discussion included Field Based Operators and aircraft dealers in regard to business owners. It was agreed to change the language on the dealers to 'factory authorized dealers'. It was agreed to change the language under servicing the aircraft for minor and major aircraft servicing. In regard to waivers; any waiver is attached to the lease. In regard to areas that are not within their leased areas; and the aircraft owner wants to utilize this for vehicle or aircraft parking, the lease must pay the airport to pave the area. In regard to portable fuel containers; it was agreed to add the words "DOT approved containers". It was also noted that Appendix B for new construction will be included in the minimum standards rather than in the lease. It was

also agreed to utilize the word 'construction' on Appendix B in lieu of Foundations, Floors and Framing. It was also agreed to allow a commercial building 4 months for completion and 6 months for private hangar completion. It was agreed to define Activity Owner on page 12 under Activity Specific Requirement. It was agreed to change the word 'operate or coordinate' a ground school when needed on page 17. It was agreed to remove the last four reasons for rejections on Page 4 A1-2 and insert blank lines for findings on the rejection. On page A1-3 under #1 change that proposal was available for review". On page A1-6 remove the number of employees under #17. Under #19 (same page) insert the word 'appear' instead of are sufficient. Also remove #22 under page A1-7 as it is a duplicate of #19. For #20 on page A1-7 insert applicant shall 'present' rather than 'are sufficient'. It was agreed to remove 4-B and place under 1-C for private hangars only.

Commissioner Chilcott asked Dave to contact Joelle Briggs for her stamp of approval as she is counsel for FAA. The Commissioners will then move forward with the adoption through the public hearing process. Glenda will run the notice, setting the public hearing prior to Commissioner Lund leaving office.